

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the operation of interruptible load programs offered by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company and the effect of these programs on energy prices, other demand responsiveness programs, and the reliability of the electric system.

Rulemaking 00-10-002
(Filed October 5, 2000)

Phase 2

**ADMINISTRATIVE LAW JUDGE'S RULING
ON DWR LETTER, CEC INFORMATION, AND
SUBMISSION OF ALL PHASE 2 MATTERS**

This ruling includes in the Phase 2 record: (1) the December 13, 2001 letter from the Department of Water Resources (DWR) to the California Independent System Operator (CAISO), plus the objection to inclusion of the DWR letter, and the response to the objection, and (2) the several pleadings regarding California Energy Commission (CEC) cost data on various demand reduction programs. Effective February 4, 2002, all Phase 2 matters are submitted for Commission consideration and preparation of a decision.

1. DWR Letter

By Ruling dated January 11, 2002, the Phase 2 record was reopened to consider inclusion of a letter dated December 13, 2001 from DWR to CAISO. The DWR letter notifies CAISO that DWR is suspending the demand bidding program (DBP) on December 15, 2001, and that it will be reactivated in June 2002

or in the event of a Stage 2 or 3 CAISO emergency, whichever occurs first. On January 16, 2002, CEC filed an objection to reopening the record and including the DWR letter.

CEC argues that inclusion of the DWR letter would mislead parties. CEC asserts DWR lacks authority to unilaterally suspend or activate the DBP. CEC states that the program is not funded, and is therefore moribund. CEC concludes that including the DWR letter without further explanation would result in erroneous interpretations of the capacity of the DBP. Respondent utilities filed and served a joint response on January 22, 2002, disagreeing with CEC's objection.

The DWR letter, objection and response have each been filed and served, and will be included in the Phase 2 record. The letter, objection and response provide sufficient explanation and context to prevent the Commission or parties from being misled.

The matter of DWR's authority will be considered as necessary where appropriate. It does not merit further burden on parties to brief the issue at this time. Whether or not DWR has authority to unilaterally suspend the DBP, the letter unequivocally states that the program will be "reactivated" no later than June 2002. Therefore, the program will be available for use no later than June 2002 to the same extent that it has at any time been available for use. Further, funding and program operation are sufficiently before the Commission in this and other proceedings by various pleadings and reports that the Commission and parties have access to other appropriate or necessary context. Parties need not be burdened to present further information at this time.

Respondent utilities urge the Commission to resolve the issue of the continued viability of the DBP, and utilities' obligations thereunder, in the

Phase 2 decision, if not sooner. Utilities state that they need to know whether bids should be solicited from customers each day, or whether these bids should be suspended until the DBP is “reactivated.” Utilities ask that the Commission find that the daily bid process should be suspended, and utilities relieved of their obligations under their respective tariffs to submit daily bids, until DWR provides written notice to utilities and the Commission that DWR is willing to accept bids.

The Commission will address the DBP to the extent necessary and reasonable in the Phase 2 order. This will probably not, however, include whether the daily bid process should be suspended.

The DBP was authorized by the granting of an emergency pleading filed by utilities (Decision (D.) 01-07-025.) Utilities now seek guidance on operation of the DBP, and their role in the DBP. By this request, utilities appear to seek modification of the order authorizing and establishing the DBP. If so, the proper vehicle is a petition for modification of D.01-07-025, including “specific wording to carry out all requested modifications to the decision.” (Rule 47(b) of the Commission’s Rules of Practice and Procedure.)

Alternatively, D.01-07-025 may not need modification. Rather, it now says: “The need to employ DBP will be determined by ISO and DWR.” (*mimeo.*, p. 3.) This might mean that ISO and DWR determine whether or not to employ the DBP on any certain day, week or month, including whether or not to solicit bids from customers, and whether or not utilities must submit bids.

The decision says: “Eligible participants may submit bids...” (*Id.*) It does not say they shall submit bids.

The decision says: “Participants will have until 1:00 p.m. on the day before a bidding day to submit their bids.” (*Id.*, Attachment A, Item 2.6.1.2.) That is,

participants have until 1:00 p.m. to submit bids, if bids are submitted. Arguably, a bid may not be required each day, and every day may not be a “bidding day.”

Thus, respondent utilities’ concern that customers will become weary of participating in a non-operational program might be misplaced. If this is a reasonable reading of D.01-07-025 regarding the role of customers and utilities in the DBP, it may be that utilities need not seek modification of D.01-07-025.

It may be, however, that utilities’ tariffs require daily operation of DBP. If so, respondent utilities may consider filing an advice letter seeking modification of tariffs for further compliance with D.01-07-025. On the other hand, the tariffs themselves may not need to be revised. For example, it may or may not be stated in each tariff that the utility must solicit and submit bids each day.

Respondent utilities fail to convincingly show that any changes are necessary at this time. If changes are necessary, respondent utilities must file another pleading (*e.g.*, petition for modification, advice letter) more specifically identifying the problem, and include appropriate proposed language to correct the problem.

2. CEC Cost Data

On January 22, 2002, CEC filed a motion to reopen the Phase 2 record to re-evaluate cost data associated with various demand reduction programs. The motion was granted in part by Ruling dated January 23, 2002. Timely objections or comments were filed by California Industrial Users, Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E), with timely reply comments filed by CEC and Southern California Edison Company (SCE).

The CEC cost data and material, and all information contained in subsequent pleadings on CEC cost data and material, have been filed and served,

and will be included in the Phase 2 record. The objections do not merit exclusion of any item, and appropriate weight will be given to each item, as explained below.

SDG&E and SCE argue that CEC cost data and material is outside the scope of Phase 2. To the contrary, a proponent for or against “other modifications” to existing programs (Phase 2, Issue 1.6) was not prohibited from presenting reasonable data in support of its recommendations. For example, PG&E was not prevented from offering a copy of its report that addressed the feasibility and cost-effectiveness of developing interruptible rate programs for smaller customers. (PG&E Comments dated November 9, 2001.) CEC is not foreclosed from submitting cost data regarding its proposals.

Opponents of CEC cost data show much of the information is already available to, or before, the Commission. Even to the extent true, the added burden of including it here is not excessive.

Opponents argue that the data is late, and could have been provided earlier. CEC replies that it is end-of-year data, and could not have been provided earlier. Year-end data could not have been developed before the end of the year. The timing of the data, even if late in the originally contemplated Phase 2 schedule, does not merit its exclusion.

Opponents state that CEC cost data and information is vague and cursory, and is opinion and conjecture. To the extent true, this will go to the weight to give CEC cost data and information. Further, CEC replies that its cost data is illustrative, not dispositive. CEC’s reply will be used to apply judgment regarding the appropriate weight to give the data. Similarly, other objections raised by opponents will be considered in the weight to give CEC data and material.

CEC objects to inclusion in the Phase 2 record of two of PG&E's statements (one regarding testing of CEC's Assembly Bill 970 program, and the other regarding CEC's participation in the January 14, 2002 workshop). The PG&E statements will be included, but the CEC's reply will be used in determining the appropriate weight to give PG&E's statements.

IT IS RULED that:

1. The December 13, 2001 letter from the Department of Water Resources (DWR) to the California Independent System Operator, the January 16, 2002 objection of the California Energy Commission (CEC), and the January 22, 2002 joint response of respondent utilities are included in the Phase 2 record. To the extent utilities want or need relief, respondent utilities shall file another pleading (*e.g.*, petition for modification, advice letter) more specifically identifying the problem with customer and utility roles in the demand bidding program, if any, and shall include appropriate proposed language to correct any alleged problem.
2. The cost data and information in the CEC motion filed January 22, 2002 is included in the Phase 2 record. Similarly, the cost data and responsive information filed and served in the following objections, comments and reply comments are included in the Phase 2 record: Comments of California Industrial Users dated January 28, 2002, Objection of Pacific Gas and Electric Company dated January 28, 2002, Objection of San Diego Gas & Electric Company dated January 28, 2002, Reply of CEC dated February 1, 2002, and Reply Comments of Southern California Edison Company dated February 4, 2002.
3. All Phase 2 matters are submitted effective February 4, 2002 for Commission consideration and decision.

Dated February 13, 2002, at San Francisco, California.

/s/ Burton W. Mattson

Burton W. Mattson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on DWR Letter, CEC Information, and Submission of all Phase 2 Matters on all parties of record in this proceeding or their attorneys of record.

Dated February 13, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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